

10/022108

P01012US1A(P289)

## REMARKS

### ELECTION OF SPECIES

The Examiner suggests that newly submitted claims 26-37 are directed toward an invention that is independent or distinct from the invention originally claimed. Accordingly, the Examiner has withdrawn claims 26-37 as being directed toward a non-elected invention.

Inasmuch as Applicants believe that the independent claims, as now submitted, are allowable, and they are properly deemed generic with respect to the Examiner's election requirement, Applicants believe that this requirement is moot.

Nonetheless, Applicants believe that further explanation as to this Restriction Requirement (or Requirement to Elect Species) is required. To this extent, Applicants do not acquiesce as to the appropriateness of this election requirement, and traverse the same. Applicants attorney contacted the Examiner, and the Examiner indicated - by way of voice mail - that authority for the Election Requirement was found at MPEP 818.02(a).

Applicants do not understand how this section of the MPEP provides authority for this requirement. Applicants note that a Restriction Requirement or a requirement for an Election of Species has not been levied during this prosecution or any previous prosecution from which the current application derives. Applicants also note that originally presented claim 10 includes several polar organic compounds including both metal carboxylates and high-HLB surfactants. In this respect, Applicants believe that the Examiner had searched each of the polar organic compounds originally presented in claim 10.

Again, if the Examiner has authority to "constructively" make an Election of Species based upon Applicants original presentation for prosecution on the merits, Applicants would appreciate an explanation of this authority.

### INFORMALITIES

Claim 38 has been amended to recite "polymer cement."

Claims 11 and 23 have been amended to be consistent with the claims from which they depend.

interview 10-2-06  
record  
OK